

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b),) MM Docket No. 00-121
Table of Allotments,) RM 9674
Digital Television Broadcast Stations)
(Kingston, New York))

RESPONSE

WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV, Kingston, New York (Facility Id. No. 74156), by its attorneys, briefly responds to the claim in the Reply of WKOB Communications, Inc. ("WKOB"), dated September 25, 2002, that WRNN's Opposition to WKOB's Application for Review should be dismissed because it allegedly was tendered one day late.¹ To the contrary, the regular pleading cycle for submitting and, therefore, responding to, applications for review in this proceeding *has not even commenced*. Accordingly, the Opposition was filed well within the time contemplated by the Commission's pleading rules. Moreover, even were the Opposition deemed to be one day late, good cause exists for its consideration in this proceeding.

By order released July 29, 2002, the Media Bureau denied WKOB's Petition for Reconsideration of the decision in MM Docket No. 00-121 modifying WRNN's DTV allotment from Channel 21 to Channel 48.² On August 28, 2002, WKOB filed its Application for Review

¹ WRNN requests leave, to the extent necessary, for the Commission to accept this Response so that WRNN may respond to WKOB's contention. This response is being filed as soon as practicable following the return of WRNN's principals from abroad.

² *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kingston, New York)*, 17 FCC Rcd 14326 (M.B. 2002) ("*Channel 48 Reconsideration Order*"), *affirming, Amendment of Section 73.622(b) Table of Allotments, Digital Television*

of that decision. WRNN responded with an Opposition on September 13, 2002, which WKOB asserts is one day late.³

Section 1.115 of the Commission's Rules mandates that, subject to exceptions not applicable here, an application for review "*shall be filed* within 30 days of public notice of such action, as that date is defined in section 1.4(b)."⁴ Section 1.4(b)(1) specifies that "public notice" of a document in a notice and comment rulemaking proceeding, such as the case here, occurs on the publication of the item in the Federal Register.⁵ The *Channel 48 Reconsideration Order* has not yet been published in the Federal Register. Since the date triggering the time period for filing an application for review by an interested party in this proceeding has not even occurred, WRNN's Opposition should not be considered untimely.

Moreover, even if the Commission were to deem the Opposition to have been filed one day late, good cause exists for its consideration. First, no harm could possibly occur to WKOB. Any party in interest has an opportunity to file for review of the *Channel 48 Reconsideration Order* until 30 days after public notice of the order in the Federal Register, whenever that shall occur. Thus, the pleading cycle contemplated in the Commission's rules for the decision subject to WKOB's Application for Review has not even begun, much less been delayed. Second, WKOB does not claim surprise and has had ample opportunity to be heard throughout this proceeding. Nothing in the Opposition, or the Application for Review to which it responds, is

(Continued . . .)

Broadcast Stations (Kingston, New York), 17 FCC Rcd 1485 (M.B. 2002).

³ Initially, WKOB indicates (at 1) that WRNN's Opposition was filed on September 15, 2002, but later identifies (at 2) the proper file date.

⁴ 47 C.F.R. § 1.115(d) (emphasis added).

⁵ 47 C.F.R. § 1.4(b)(1).

novel. Thus, WKOB would not be prejudiced in any way by considering the full record, including the Opposition, in this proceeding. Nor does the precedent cited in WKOB's Reply support the drastic action WKOB seeks here. In *Panola Broadcasting Co.*, 68 F.C.C.2d 533 (1978), the Commission dismissed as untimely a petition for reconsideration that had not been filed within the time mandated *by statute* for seeking such relief. No statutory deadline is applicable to WRNN's responsive pleading. With respect to *Mobile Radio Services*, DA 02-179 (Jan. 22, 2002), the Wireless Telecommunications Bureau rejected as untimely a petition for reconsideration that was filed *four months* late.⁶ The alleged one-day delay in the filing of WRNN's Opposition is not remotely comparable.

In short, the claim that WRNN's Opposition was untimely is unsupported. The Commission should therefore promptly issue its determination in this proceeding based upon its review of the full record.

Respectfully submitted,

WRNN-TV ASSOCIATES LIMITED
PARTNERSHIP

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⁶ The Wireless Bureau also dismissed an opposition to the petition for reconsideration, which had not been filed until after the passage of more than twice the time provided in the rules for submitting an opposition. Moreover, since the Bureau dismissed the opposition, it also dismissed the reply that had been filed in response thereto. *Mobile Radio Service, Inc.*, DA 02-179 at 2-3 n.21. If the Commission were to dismiss WRNN's Opposition in this case, based on *Mobile Radio Services, Inc.*, it would logically dismiss WKOB's Reply as well.

CERTIFICATE OF SERVICE

I, Eve J. Klindera, hereby certify that on this 3rd day of October, 2002, I caused copies of the foregoing **Response** to be sent via postage pre-paid first-class mail delivery to the following:

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